

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                                 |   |                  |
|---------------------------------|---|------------------|
| GREEN EDGE ENTERPRISES, LLC,    | ) |                  |
|                                 | ) |                  |
| Plaintiff,                      | ) |                  |
|                                 | ) |                  |
| v.                              | ) | No. 4:02CV566TIA |
|                                 | ) |                  |
| RUBBER MULCH ETC., LLC, et al., | ) |                  |
|                                 | ) |                  |
| Defendants.                     | ) |                  |
|                                 | ) |                  |
| AND RELATED CLAIMS              | ) |                  |

**MEMORANDUM AND ORDER**

This matter is before the Court on its Order of June 3, 2008 [Doc. #265] and Docket Text Order of July 7, 2008. The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

On June 3, 2008, the undersigned ordered each party to submit, in writing, a status report containing information regarding remaining claims; intention to pursue or dismiss any remaining claims; and the time frame for filing any necessary motions and responses. The Court explicitly stated that “[f]ailure by any party to comply with this Order may result in dismissal of that party’s claims.” The Court received responses from all parties except Defendant/Counter Claimant Rubber Mulch Etc., LLC (“Rubber Mulch”).

On July 7, 2008, the Court became aware that the June 3, 2008 Order had not been sent to Rubber Mulch. Therefore, the Court directed the Clerk of the Court to send a copy of the Order via U.S. Mail to the appropriate Rubber Mulch representative(s). The Court further ordered Rubber Mulch to respond to the June 3, 2008 Order within ten days. [Docket Text Order of 7/7/08]

As of this date, the Court has received no response from Rubber Mulch regarding the status

of its pending claims. As previously stated, failure to comply with the June 3, 2008 Order could result in the dismissal of that party's claims. According to the responses filed by the other parties, Rubber Mulch has several claims pending against Green Edge Enterprises, LLC, Lee Greenberg, Judy Smith, International Mulch Company, and Michael Miller. These claims include Declaratory Judgement of Non-Infringement of "RUBBERIFIC MULCH" Trademark against Green Edge; Declaratory Judgment "RUBBERIFIC MULCH" Trademark is Invalid and Unenforceable against Green Edge; Unfair Competition against Green Edge, Lee Greenberg, Judy Smith, International Mulch, and Michael Miller; and Breach of Contract against Green Edge, Lee Greenberg, Judy Smith, International Mulch, and Michael Miller.

Based on the unresponsiveness of Rubber Mulch, the Court finds that dismissal of Rubber Mulch's claims against Green Edge, Lee Greenberg, Judy Smith, International Mulch, and Michael Miller is warranted. Also worth noting is the motion to withdraw filed by Rubber Mulch's former attorney of record, John H. Quinn III, indicating that Rubber Mulch no longer wished to pursue its claims in this action. [Doc. #264]

Accordingly,

**IT IS HEREBY ORDERED** that Defendant/Counter Claimant Rubber Mulch Etc., LLC's Counts III, IV, V, and VI contained in the Amended Counterclaim [Doc. #87] are **DISMISSED** without prejudice for failure to respond to the June 3, 2008 Order of this Court. The only claim

remaining in the Amended Counterclaim is Rubber Resources' Count V against Green Edge, Lee Greenberg, Judy Smith, International Mulch, and Michael Miller.

Dated this 22nd day of July, 2008.

/s/ Terry I. Adelman  
UNITED STATES MAGISTRATE JUDGE